

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

November 10, 2021 at 9:00 a.m.

THE TRUSTEE HAS NOTIFIED THE COURT (NO MOTION TO DISMISS OR STATUS REPORT FILED) THAT FOR ITEMS 1 THROUGH 9 THE DEFAULTS HAVE BEEN CURED AND THE TRUSTEE WILL BE REQUESTING THAT THOSE MOTION BE DISMISSED/DENIED AT THE HEARING

1. [19-21015-E-13](#) CAVIN SMITH AND DIANA MOTION TO DISMISS CASE
[DPC-3](#) AGUILAR 10-13-21 [53]
Scott Hughes

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 13, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is ~~denied without prejudice~~.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtors, Cavin Wayne Smith and Diana Carolina Aguilar (“Debtors”), are delinquent in plan payments. Debtors have paid a total of \$67,389.96, with the last payment received on October 6, 2021. The Trustee shows a total of \$69,63.18 is due. Debtors are delinquent \$2,253.22 in plan payments with a monthly payment of \$2,253.22. Prior to the hearing, another payment will be due bringing the total amount to \$4,506.44 to bring the plan current.

DEBTOR’S RESPONSE

Debtors filed a Response on October 26, 2021. Dckt. 57. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Delinquent

Debtor are \$2,253.22 delinquent in plan payments, which represents one month of the \$2,253.22 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

~~At the hearing the Trustee reported that the default has been cured and the Motion may be denied without prejudice.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.~~

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 18, 2021. By the court’s calculation, 23 days’ notice was provided. 14 days’ notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further.

The Motion to Dismiss is denied without prejudice.
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtors, Jose Segura and Jacqueline Segura (“Debtors”), are delinquent in plan payments. Debtors have paid a total of \$70,470.00, with the last payment received on July 27, 2021. The Trustee shows a total of \$74,380.00 is due. Debtors are delinquent \$3,910.002 in plan payments with a monthly payment of \$1,955.00. Prior to the hearing, another payment will be due bringing the total amount to \$5,865.00 to bring the plan current.

DISCUSSION

Delinquent

Debtors are \$3,910.00 delinquent in plan payments, which represents multiple months of the \$1,955.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

~~At the hearing the Trustee reported that the default has been cured and the Motion may be denied without prejudice.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.~~

3. [17-20219-E-13](#) **LUIS/CECILIA VARGAS** **MOTION TO DISMISS CASE**
[DPC-2](#) **Mitchell Abdallah** **10-13-21 [89]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 13, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is denied without prejudice.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtors, Luis Alberto Vargas and Cecilia Janette Vargas (“Debtors”), are delinquent in plan payments. The Debtor has paid a total of \$12,860.01, with the last payment received on August 23, 2021. The Trustee shows a total of \$13,343.01 is due. The debtor is delinquent \$483.00 in plan payments with a monthly payment of \$241.50. Prior to

the hearing another payment will be due bringing the total amount to \$724.50 to bring the plan current.

DEBTOR'S RESPONSE

Debtors filed a Response on October 26, 2021. Dckt. 93. Debtor remitted a total of \$724.50 on or about October 26, 2021 to Trustee to bring current their Chapter 13 Plan, evidenced by Exhibit A, Dckt. 95.

DISCUSSION

Delinquent

Debtors are \$483.00 delinquent in plan payments, which represents multiple months of the \$241.50 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

November 10, 2021 Hearing

~~At the hearing the Trustee reported that the default has been cured and the Motion may be denied without prejudice.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.~~

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 13, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is denied without prejudice.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtors, Christopher Nery Martinez and Scott Alan Mills ("Debtors"), are delinquent in plan payments. Debtors have paid a total of \$51,744.00, with the last payment received on September 14, 2021. The Trustee shows a total of \$56,448.00 is due. Debtors are delinquent \$4,704.00 in plan payments with a monthly payment of \$2,352.00. Prior to the hearing, another payment will be due bringing the total amount to \$7,056.00 to bring the plan current.

DEBTOR'S OPPOSITION

Debtors filed an Opposition on October 27, 2021. Dckt. 22. Debtors have initiated payments through TFS on October 20, 2021, October 26, 2021, and October 27, 2021, for three payments in the amount of \$2,352.00 each, which will bring their plan current. This is evidenced by the Debtors' Declaration filed on October 27, 2021, Dckt. 23, and Exhibit A, Dckt. 24, filed on October 27, 2021.

DISCUSSION

Delinquent

Debtors are \$4,704.00 delinquent in plan payments, which represents multiple months of the \$2,352.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan

payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtors, however, state they initiated payments which would bring their plan current.

~~At the hearing the Trustee reported that the default has been cured and the Motion may be denied without prejudice.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.~~

5. [17-25327-E-13](#) **ROGELIO CASTANEDA** **MOTION TO DISMISS CASE**
 [DPC-3](#) **Peter Macaluso** **10-13-21 [35]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 13, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is denied without prejudice.
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Rogelio Castaneda (“Debtor”), is delinquent in plan

payments. The Debtor has paid a total of \$5,875.00, with the last payment received on August 27, 2021. The Trustee shows a total of \$6,125.00 is due. The debtor is delinquent \$250.00 in plan payments with a monthly payment of \$125.00. Prior to the hearing another, payment will be due bringing the total amount to \$375.00 to bring the plan current.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 27, 2021. Dckt. 39. Debtor states the delinquency has been cured and this is verified through Trustee's website. The Debtor remitted delinquent payments on October 15, 2021, \$125.00 was paid and on October 22, 2021, \$125.00 was paid.

DISCUSSION

Delinquent

Debtor is \$250.00 delinquent in plan payments, which represents multiple months of the \$125.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor, however, states the delinquency has been cured and is verified through Trustee's website. Debtor has not provided exhibits evidencing the cure.

~~At the hearing the Trustee reported that the default has been cured and the Motion may be denied without prejudice.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.~~

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 13, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is ~~denied without prejudice.~~

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Mark Haynes ("Debtor"), is delinquent in plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on October 14, 2021. Dckt. 72. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$3,818.00 delinquent in plan payments, which represents two months of the \$1,909.00 plan payment. Trustee states that Debtor has paid \$28,635.00, with the last payment received on August 30, 2021, and shows a total of \$32,453.00 is due. Before the hearing, another plan payment will be due and as a result Debtor will need to pay \$5,727.00 in order to bring the Plan current by the date of the hearing. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

~~At the hearing the Trustee reported that the default has been cured and the Motion may be denied without prejudice.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.~~

7. [18-27160-E-13](#) **CLAUDIA/EDWARD JENKINS** **MOTION TO DISMISS CASE**
[DPC-3](#) **Peter Macaluso** **10-13-21 [121]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 13, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is denied without prejudice.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Claudia Jenkins and Edward Riley Jenkins (“Debtors”), are delinquent in plan payments.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on October 27, 2021. Dckt. 125. Debtor states the delinquency will be cured prior to the hearing date.

DEBTOR’S DECLARATION

Debtor Claudia Jenkins filed a declaration on November 1, 2021. Dckt. 127. Debtor states she was not notified of her missed payments. Debtor states they have now signed up for automatic

payments and will be current on or before the hearing.

DISCUSSION

Delinquent

Debtor is \$2,300.00 delinquent in plan payments, which represents two months of the \$1,150.00 plan payment. Trustee states that Debtor has paid \$36,300.00, with the last payment received on August 12, 2021, and shows a total of \$38,600.00 is due. Before the hearing, another plan payment will be due and as a result Debtor will need to pay \$3,450.00 in order to bring the Plan current by the date of the hearing. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

~~At the hearing the Trustee reported that the default has been cured and the Motion may be denied without prejudice.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.~~

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 22, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is denied without prejudice.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Michael Everett Scallin (“Debtor”), is delinquent on plan payments.

DEBTOR’S OPPOSITION

Debtor filed a Supplemental Opposition on October 6, 2021. Dckt. 161. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$2,490.00 delinquent in plan payments, which represents multiple months of the \$844.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Counsel for the Trustee reported that an electronic payment is pending, but there have been six prior electronic payments that have failed. The Trustee agreed to a short continuance to allow for the payment to be made.

November 10, 2021 Hearing

~~At the hearing the Trustee reported that the default has been cured and the Motion may be denied without prejudice.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.~~

9. [17-22982-E-13](#) SANDRA AVILA MOTION TO DISMISS CASE
 [DPC-9](#) Michael Hays 10-13-21 [\[109\]](#)

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 13, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is denied without prejudice.
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Sandra Lyne Avila (“Debtor”), is delinquent on plan payments. The Debtor has paid a total of \$11,500.00, with the last payment receive on July 30, 2021. The Trustee shows a total of \$11,960.00 is due. The debtor is delinquent \$460.00 in plan payments

with a monthly payment of \$230.00. Prior to the hearing, another payment will be due resulting in the Debtor needing to pay \$690.00 to bring this plan current.

DEBTOR'S RESPONSE

Debtor filed a Response on October 14, 2021. Dckt. 113. Debtor states the delinquency will be cured prior to the hearing date. If not, the Debtor requests a conditional order that her case not be dismissed as long as the total amount of \$690.00 is received by the Trustee by Friday, November 19, 2021.

DISCUSSION

Delinquent

Debtor is \$460.00 delinquent in plan payments, which represents multiple months of the \$230.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

~~At the hearing the Trustee reported that the default has been cured and the Motion may be denied without prejudice.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.~~

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 18, 2021. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtors, Joshua Thomas Griem and Emma Jean Griem ("Debtors"), are delinquent in plan payments. Debtors have paid a total of \$7,056.00, with the last payment received on July 27, 2021. The Trustee shows a total of \$15,183.32 is due. Debtors are delinquent \$8,127.32 in plan payments with a monthly payment of \$3,795.83. Prior to the hearing another payment will be due bringing the total amount to \$11,923.15, to bring the plan current.

DISCUSSION

Delinquent

Debtors are \$8,127.32 delinquent in plan payments, which represents multiple months of the \$3,795.83 plan payment. Before the hearing, another plan payment will be due. Failure to make plan

payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

11.	<u>18-25114-E-13</u> <u>DPC-2</u>	DAVID HOWERTON Peter Macaluso	CONTINUED MOTION TO DISMISS CASE 9-21-21 [89]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 21, 2021. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is XXXX.
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, David De Vaughn Howerton (“Debtor”), is delinquent on plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 5, 2021. Dckt. 93. Debtor has remitted the sum of \$3,800.00 on October 4, 2021 to the Trustee and requests a 30 day continuance to cure the remaining delinquency.

DISCUSSION

Delinquent

Debtor is \$3,115.00 delinquent in plan payments, which represents multiple months of the \$1,955.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the hearing Debtor's counsel reported that a cashier's check was sent to the Trustee on October 5 and 19, 2021.

Further, at the hearing, Debtor's counsel stated that his client has told him the checks have actually been mailed and he believes (but does not have personal knowledge) that the default has been addressed.

The Trustee agreed to a short continuance to allow for the "checks that are in the mail" to arrive at the Trustee's office.

November 10, 2021 Hearing

At the hearing, ~~XXXXXXXXXX~~

~~Unfortunately for Debtor, a promise Debtor paid is not evidence that resolves the Motion.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~**IT IS ORDERED** that the Motion to Dismiss is ~~xxxxxx~~.~~

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 13, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtors, Stephen Anthony Gingold and Karen Michelle Gingold ("Debtors"), are delinquent in plan payments. Debtors have paid a total of \$86,119.79, with the last payment received on October 7, 2021. The Trustee shows a total of \$91,534.92 is due. Debtors are delinquent \$5,415.13 in plan payments with a monthly payment of \$3,845.00. Prior to the hearing, another payment will be due bringing the total amount to \$9,260.13 to bring the plan current.

DEBTOR'S OPPOSITION

Debtors filed an Opposition on October 27, 2021. Dckt. 168. Debtors state a copy of the money gram receipt dated October 23, 2021, is attached as Exhibit 1. Dckt. 170. The money gram was for \$47,490.00 and \$3,845.00, of which was for the regular October plan payment plus \$3,645.00 toward the plan arrears. Based on the timing of pay, Karen is making another \$400.00 money gram payment to TFS on October 28, 2021, and the balance of \$1,370.00 after her next pay check, November 16, 2021. The delinquency will be cured on or before November 25, 2021.

DISCUSSION

Delinquent

Debtors are \$5,415.13 delinquent in plan payments, which represents multiple months of the

\$3,845.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

13.	<u>21-21928-E-13</u> <u>DPC-2</u>	MATTHEW/KRISTIE BLASINGAME Steele Lanphier	CONTINUED MOTION TO DISMISS CASE 9-21-21 [36]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 21, 2021. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is denied.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Matthew Donald Blasingame and Kristie Marie Blasingame (“Debtor”), is causing an unreasonable delay.

DEBTOR’S REPLY

Debtor filed a Reply on October 6, 2021. Dckt. 40. Debtor states a new plan and motion to confirm is on file well before the hearing on this matter.

DISCUSSION

No Pending Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on August 11, 2021. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the amended plan having been filed and the Debtor appearing to be actively prosecuting the case, the court denies the Motion without prejudice.

The Trustee concurred with a requested short continuance to allow Debtor and counsel to present an amended plan and motion to confirm.

Supplemental Declaration of Trustee

On November 3, 2021, Trustee filed a supplemental declaration. Trustee states Debtor is current under the last proposed plan. Beginning December 1, 2021, the Creditor will require resuming payments. Additionally, Debtor currently has no pending plan where the Trustee’s objection was sustained on August 11, 2021. Trustee believes a current Schedule I and J may be necessary but Debtor can make the payment in the plan as originally proposed. Debtor Kristie Blasingame may be making slightly more than originally scheduled.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss denied, and the bankruptcy case shall proceed in this court.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 22, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtors, Ricky and Denise Tanwar ("Debtors"), are delinquent in plan payments under the confirmed plan.

DEBTOR'S RESPONSE

Debtors filed a Response on October 6, 2021. Dckt. 31. Debtors state that the delinquency was caused by medical surgeries that forced Debtor(s) to take time off, and Debtor lost her job. The delinquency will be cured prior to the hearing date thanks to a catch up payment with help from family.

DISCUSSION

Delinquent

Debtors are \$1,344.00 delinquent in plan payments, which represents multiple months of the \$549.00 plan payment. Before the hearing, another plan payment will be due, bringing the total due to bring the plan current by the date of the hearing to \$1,893.00. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

At the hearing, the Trustee agreed to a continuance to allow Debtor and counsel the opportunity to address the default.

TRUSTEE'S SUPPLEMENTAL DECLARATION

Trustee filed a supplemental declaration on November 3, 2021. Trustee states Debtor is still delinquent \$1,242.00.

Cause exists to dismiss this case, and the Motion is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

15.	<u>17-27346-E-13</u>	KENNETH TABOR	MOTION TO DISMISS CASE
	<u>DPC-8</u>	Scott Shumaker	10-13-21 <u>[233]</u>

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 13, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Kenneth Roger Taylor ("Debtor"), is delinquent on plan

payments. The Debtor has paid a total of \$71,806.44, with the last payment received on June 17, 2021. The Trustee shows a total of \$76,968.44 is due. The debtor is delinquent \$5,162.00 in plan payments with a monthly payment of \$1,945.00. Prior to the hearing, another payment will be due bringing the total amount to \$7,107.00 to bring the plan current.

DEBTOR'S RESPONSE

Debtor filed a Response on October 27, 2021. Dckt. 237. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$5,162.00 delinquent in plan payments, which represents multiple months of the \$1,945.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay or file a modified plan is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 13, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is denied without prejudice.</p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Christopher Steven Keener ("Debtor"), is delinquent in plan payments. The Debtor has paid a total of \$9,184.98, with the last payment received on August 2, 2021. The Trustee shows a total of \$15,300.96 is due. The debtor is delinquent \$6,115.98 in plan payments with a monthly payment of \$3,057.99. Prior to the hearing, another payment will be due bringing the total amount to \$9,173.97 to bring the plan current.

DEBTOR'S RESPONSE

Debtor filed a Response on October 27, 2021. Dckt. 40. Debtor states they are working on their modified plan and will have it and supporting documents on file prior to the hearing on the Motion to Dismiss.

DISCUSSION

Delinquent

Debtor is \$6,115.98 delinquent in plan payments, which represents multiple months of the \$3,057.99 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor's First Modified Plan, November 5, 2021

On November 5, 2021, Debtor filed a First Modified Chapter 13 Plan. Dckt. 45. Debtor states they will pay \$3,098.00 per month for months seven (7) through sixty (60). Additionally, Select Portfolio Servicing, Inc (pre-petition arrears) shall receive a monthly dividend of \$708.62 for months seven (7) through sixty (60) and Select Portfolio Servicing, Inc (post-petition arrears) shall receive a monthly dividend of \$71.36 for months seven (7) through sixty (60). The percentage to unsecured has changed to no less than 0% based on the filed claims.

Trustee's Response, November 9, 2021

On November 9, 2021, Trustee filed a response to Debtor's Motion to Modify. Dckt. 54. Trustee shows the plan meets the requirements of 11 U.S.C. § 1325. Trustee notes a payment of \$3,098.00 will become due on November 25, 2021.

Plan and Motion to Confirm Filed

Debtor has filed an Modified Plan (Dckt. 45) and Motion to Confirm (Dckt. 43) to address the defaults. From the court's preliminary review, it appears that the Motion states grounds with particularity upon which relief is based and that the Declaration in support (Dckt. 46) states personal knowledge testimony in support of the Motion to Confirm.

Given Debtor's active prosecution of confirmation of a Plan, the Motion is denied without prejudice.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 13, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Wade Scott Nielsen ("Debtor"), is delinquent in plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on October 14, 2021. Dckt. 67. Debtor states the delinquency will be cured prior to the hearing date. If Debtor is not current by the hearing date, he requests the court issue a conditional order stating that the case will not be dismissed as long as the total amount of \$3,393.00 is received by the Trustee by November 19, 2021.

TRUSTEE'S SUPPLEMENTAL FILING

Trustee filed a supplemental *ex parte* document stating Debtor's payment of \$3,393.00 has been posted and the plan payments are current through October 2021. Trustee requests the Motion be dismissed.

The Trustee, having filed an *Ex Parte* Motion to Dismiss the pending Motion on November 1, 2021, Dckt. 69; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Wade Scott Nielsen ("Debtor"); the *Ex Parte* Motion is granted, the Chapter 13 Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

IT IS ORDERED that the Chapter 13 Trustee's Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 13, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss is granted, and the case is dismissed.

Debtor filed a Response on October 29, 2021. Dckt. 45. The deadline for filing a written response was October 27, 2021. Debtor states he fell behind in plan payments because part of Debtor's pay is temporarily delayed, but will be current on plan payments prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$3,078.38 delinquent in plan payments, which represents one month of the \$3,078.38 plan payment. Trustee states that Debtor has paid \$78,339.40, with the last payment received on October 7, 2021, and shows a total of \$81,417.78 is due. Before the hearing, another plan payment will be due and as a result Debtor will need to pay \$6,156.76 in order to bring the Plan current by the date of the hearing. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 6, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtors, Elmer Noe Crespín and Alma Yared Crespín ("Debtor"), are delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on July 21, 2021. Dckt. 346. Debtor states they have remitted an additional payment of \$2,700.00. Debtor also explains they have had inconsistent income due to the ongoing pandemic and thus the Debtor needs additional time to cure the delinquency.

DISCUSSION

Delinquent

Debtor are \$8,041.96 delinquent in plan payments, which represents multiple months of the \$2,685.49 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the August 4, 2021 hearing, counsel for Debtor reported that it has not been cured, but requests a continuance. The Trustee concurred given the age of this case and efforts of Debtor.

October 20, 2021 Hearing

Nothing further has been filed by either the Trustee or Debtor in connection with the default or any cure by Debtor. At the hearing, counsel for the Trustee reported that the \$2,700 payment has been received, but not the other two payments stated in the Declaration in opposition (Dckt. 353). The Trustee agreed to a continuance in light of the age of this case.

At the hearing, the Trustee reported that the Debtor has not cured the delinquency.

However, the Trustee agreed to a short continuance to allow the Debtor to diligently proceed with the prosecution of this case as represented by Debtor's counsel at the hearing.

November 10, 2021 Hearing

Nothing further has been filed by either the Trustee or Debtor in connection with the default or any cure by Debtor.

At the hearing, ~~xxxx~~

~~_____ Cause exists to dismiss this case.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~_____ Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~_____ The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~_____ **IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.~~

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 13, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtors, Eufemio Ordonia Seguban and Liza Frani Seguban ("Debtors"), are delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 27, 2021. Dckt. 124. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$1,532.01 delinquent in plan payments, which represents multiple months of the \$685.00 plan payment. Trustee states that Debtor has paid \$13,967.99, with the last payment received on September 20, 2021, and shows a total of \$15,500.00 is due. Before the hearing, another plan payment will be due and as a result Debtor will need to pay \$2,217.01 in order to bring the Plan current by the date of the hearing. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

21. [17-23384-E-13](#) **JAMES MORGAN** **MOTION TO DISMISS CASE**
[DPC-2](#) **Kristy Hernandez** **10-13-21 [39]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 13, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is denied without prejudice.
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, James Calvin Morgan (“Debtor”), is delinquent on plan payments. The Debtor has paid a total of \$15,600.00, with the last payment received on September 17, 2021. The Trustee shows a total of \$16,380.00 is due. The debtor is delinquent \$780.00 in plan payments with a monthly payment of \$365.00. Prior to the hearing, another payment will be due resulting in the Debtor needing to pay \$1,145.00 to bring this plan current.

DEBTOR'S REPLY

Debtor filed a Reply on October 27, 2021. Dckt. 43. Debtor states has paid the delinquency payment in the amount of \$300.00 and mailed another payment of \$845.00 on October 25, 2021. Exhibit A; Dckt. 45.

DISCUSSION

Delinquent

Debtor is \$780.00 delinquent in plan payments, which represents multiple months of the \$365.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the hearing, ~~XXXXXXXXXX~~

~~Based on the foregoing, the Motion is denied without prejudice.~~

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.~~

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 13, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Jennifer Ellen Garner ("Debtor"), is delinquent on plan payments. The Debtor has paid a total of \$3,376.00, with the last payment received on July 14, 2021. The Trustee shows a total of \$3,780.00 is due. The debtor is delinquent \$404.00 in plan payments with a monthly payment of \$135.00. Prior to the hearing, another payment will be due resulting in the Debtor needing to pay \$539.00 to bring this plan current.

DEBTOR'S REPLY

Debtor filed a Reply on October 27, 2021. Dckt. 28. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$404.00 delinquent in plan payments, which represents multiple months of the \$135.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

23. [19-25193-E-13](#) **DAMON TURNER** **MOTION TO DISMISS CASE**
[DPC-2](#) **Scott Hughes** **10-13-21 [45]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 13, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Damon Gilbert Turner (“Debtor”), is delinquent on plan payments. The Debtor has paid a total of \$80,794.00, with the last payment received on August 20, 2021. The Trustee shows a total of \$91,866.42 is due. The debtor is delinquent \$11,072.42 in plan payments with a monthly payment of \$3,724.98. Prior to the hearing,

another payment will be due resulting in the Debtor needing to pay \$14,797.41 to bring this plan current.

2. According to the Trustee's calculation, the Plan will complete in 89 months, as opposed to 60 months pursuant to the confirmed Plan. The confirmed plan filed on August 19, 2019, Dckt. 2, reflects a commitment period of sixty (60) months with one hundred percent (100%) to unsecured creditors. A total of thirty-five (35) months remain under the confirmed Plan where Debtor will pay a total of \$130,374.30 (\$3,724.98 x 35 months). Taking out the \$5,084.59 for Trustee fees leaves \$125,289.71 available to pay creditors, when \$163,246.58 is needed to pay the ongoing mortgage payments, including principal amounts due, pre-petition mortgage arrears, and unsecured claims.

DEBTOR'S RESPONSE

Debtor filed a Response on October 26, 2021. Dckt. 49. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$11,072.42 delinquent in plan payments, which represents multiple months of the \$3,724.98 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Exceeding Sixty Months

Debtor is in material default under the Plan because the Plan will complete in 89 months as opposed to 60 months pursuant to the confirmed plan. The confirmed plan filed on August 19, 2019, Dckt. 2, reflects a commitment period of sixty (60) months with one hundred percent (100%) to unsecured creditors. A total of thirty-five (35) months remain under the confirmed Plan where Debtor will pay a total of \$130,374.30 (\$3,724.98 x 35 months). Taking out the \$5,084.59 for Trustee fees, leaves \$125,289.71 available to pay creditors when \$163,246.58 is needed to pay the ongoing mortgage payments, including principal amounts due, pre-petition mortgage arrears, and unsecured claims.. Section 5.02 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

24. [16-27697-E-13](#) **BRIAN OKAMOTO** **MOTION TO DISMISS CASE**
[DPC-7](#) **Peter Macaluso** **10-13-21 [246]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 13, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Brian Mitchell Okamoto (“Debtor”), is delinquent on plan payments. The Debtor has paid a total of \$107,333.95, with the last payment receive on July 27, 2021. The Trustee shows a total of \$110,133.95 is due. The debtor is delinquent \$2,800.00 in plan payments with a monthly payment of \$1,400.00. Prior to the hearing, another payment will be due resulting in the Debtor needing to pay \$4,200.00 to bring this plan current.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on October 27, 2021. Dckt. 250. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$2,800.00 delinquent in plan payments, which represents multiple months of the \$1,400.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 13, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Mark Allen Vukas ("Debtor"), is delinquent on plan payments. The Debtor has paid a total of \$30,094.94, with the last payment received on July 22, 2021. The Trustee shows a total of \$35,258.00 is due. The debtor is delinquent \$5,163.06 in plan payments with a monthly payment of \$2,530.00. Prior to the hearing, another payment will be due resulting in the Debtor needing to pay \$7,693.06 to bring this plan current.

DEBTOR'S RESPONSE

Debtor filed a Response on October 26, 2021. Dckt. 59. Debtor's counsel states they have not heard from the Debtor regarding the default and motion to dismiss. Debtor's counsel insists the Court allow the Debtor to cure the delinquency, but if the plan is almost current Debtor's counsel asks for a continuance or a conditional order of dismissal to give him more time.

DISCUSSION

Delinquent

Debtor is \$5,163.06 delinquent in plan payments, which represents multiple months of the \$2,530.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

This case was filed in July 2020 and is now fifteen months old. Debtor does not have significant time and money invested in this case.

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

FINAL RULINGS

26. [18-24372-E-13](#) **JOHN MARTIN** **MOTION TO DISMISS CASE**
[DPC-1](#) **Richard Jare** **10-13-21 [81]**

Final Ruling: No appearance at the November 10, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 13, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is denied without prejudice.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, John J. Martin (“Debtor”), has stopped paying and \$2,300 is needed to complete the case.

DEBTOR’S RESPONSE

Debtor filed a Response on October 25, 2021. Dckt. 86. Debtor states his attorney, Richard Jare, has been unresponsive to Debtor’s request to consult with him. Debtor believed his bankruptcy case was completed when he sold his house. Debtor states he cannot afford additional attorney’s fees of \$2,300.00 or pay \$350.00 into his Plan. Debtor requests the court to discharge the remaining amount.

DEBTOR’S COUNSEL’S DECLARATION

Debtor’s counsel, Richard Jare, filed a declaration on October 27, 2021. Dckt. 87. He states the last time he communicated with Debtor was in January 2021 and disagrees with Debtor’s contention that he has been unresponsive. Mr. Jare provides a picture of his last attempted communication with Debtor, which shows Mr. Jare text-messaged Debtor on January 15, 2021, and January 20, 2021, but Debtor did not respond. Dckt. 88, Exhibit 1. The message sent on January 20, 2021, states “Shall we file a change of address with the court? Let me know soon what that address should be.” Mr. Jare

asserts this was the last time he communicated with Debtor and has not heard from him since January 2021.

Mr. Jare states that Debtor sold his residence on January 15, 2021, and purchased his current property on March 10, 2021. Mr. Jare states he is unsure whether Debtor purchased his new residence with the proceeds of the sale from his old home. Additionally, he states Debtor purchased the new home after the court awarded additional attorney's fees.

Mr. Jare states that his \$2,300.00 award is minimal in comparison to what the court would award a Chapter 7 trustee's attorney. The court notes that this information is irrelevant. In addition, he has been awarded \$2,000.00, not \$2,300.00.

Finally, Mr. Jare states that since the Debtor filed a response by himself, the attorney-client relationship has "broken down" and Debtor should be given the opportunity to get new counsel.

DISCUSSION

Debtor's Case is Not Complete

Trustee states Debtor needs to pay approximately \$2,300.00 to complete the case. The remaining expenses are for the following:

1. Trustee's records reflect \$58,881.40 being paid on January 25, 2021. Trustee claims this left a balance of \$151.30 to complete the case.
2. Mr. Jare filed a Motion for Additional Fees on February 9, 2021, in the amount of \$2,000.00. Dckt. 72. The court granted the motion and issued the Order on March 12, 2021. Dckt. 80.

Regarding Mr. Jare's additional fees, Trustee emailed Mr. Jare on February 9, 2021, March 23, 2021, and May 27, 2021, inquiring the status of Debtor paying off the additional amounts to complete the case. Dckt. 84, Exhibit 1. Mr. Jare did not respond to any of Trustee's emails. Further, Trustee mailed a letter to Debtor and copied Mr. Jare on April 29, 2021 inquiring about the outstanding balance. The court notes that the Debtor's address on the letter is the address of the house Debtor sold previously. Debtor did not file a change of address until October 25, 2021. Dckt. 86.

Debtor is in the thirty-ninth (39) month of a fifty-two (52) month plan. Debtor's Plan called for \$350.00 monthly payments until fifty-two months have elapsed or claims have been paid in full. In order to pay the approved attorney's fees and unsecured claims in full, Debtor needs to pay approximately \$2,300.00 into the Plan.

The court notes it is unclear on how much the Debtor actually owes to the plan since Trustee does not provide the court with what claims were paid off. Trustee notes the Plan still had \$151.30 to be paid and \$2,000.00 for the attorney's fees, but is stating that Debtor needs to pay about \$2,300.00 to complete the Plan. This leaves \$148.70 of unclassified expenses.

Discharge

With some exceptions, 11 U.S.C. § 1328 permits the discharge of debts provided for in a plan or disallowed under 11 U.S.C. § 502 after the completion of plan payments. Section 1328(b)(1) states that at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to the debtor that has not completed payments under the plan if debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable. Here, Debtor states his attorney has failed to communicate with Debtor and Trustee in regards to the outstanding balance. Debtor believed the case had previously ended and Mr. Jare requested \$2,000.00 to be paid to him, even though he is not communicating with his client or Trustee. While 11 U.S.C. § 1328 requires a notice and hearing, Mr. Jare's failure to communicate with his client makes it difficult for Debtor to file the proper pleadings. However, Mr. Jare contends that he is not being unresponsive. Still, Mr. Jare is being unresponsive to Trustee and did not properly communicate with his client that his case was not closed.

Plan and Motion to Confirm Filed

Debtor has filed a Modified Plan (Dckt. 91) and Motion to Confirm (Dckt. 89) to address the defaults. From the court's preliminary review, it appears that the Motion states grounds with particularity upon which relief is based and that the Declaration in support (Dckt. 92) states personal knowledge testimony in support of the Motion to Confirm.

Given Debtor's active prosecution of confirmation of a Plan, the Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

Final Ruling: No appearance at the November 10, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 13, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is denied without prejudice.</p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Shanita Lorain Jefferson (“Debtor”), is delinquent on plan payments. The Debtor has paid a total of \$4,385.00, with the last payment received on August 9, 2021. The Trustee shows a total of \$5,035.00 is due. The debtor is delinquent \$650.00 in plan payments with a monthly payment of \$325.00. Prior to the hearing, another payment will be due resulting in the Debtor needing to pay \$975.00 to bring this plan current.

DEBTOR’S RESPONSE

Debtor filed a Response on October 27, 2021. Dckt. 110. Debtor states a modified plan has been filed, under which she is current.

DISCUSSION

Delinquent

Debtor is \$650.00 delinquent in plan payments, which represents multiple months of the \$325.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to file a modified plan is not evidence that resolves the Motion.

Plan and Motion to Confirm Filed

Debtor has filed a Modified Plan (Dckt. 117) and Motion to Confirm (Dckt. 113) to address the defaults. From the court's preliminary review, it appears that the Motion states grounds with particularity upon which relief is based and that the Declaration in support (Dckt. 115) states personal knowledge testimony in support of the Motion to Confirm.

Given Debtor's active prosecution of confirmation of a Plan, the Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

28.	<u>20-23200-E-13</u> <u>DPC-3</u>	JOHN MONROE Chad Johnson	MOTION TO DISMISS CASE 10-13-21 [71]
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Final Ruling: No appearance at the November 10, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 13, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion to Dismiss is granted, and the case is dismissed
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, John Henry Monroe (“Debtor”), is delinquent in plan payments. The Debtor has paid a total of \$82,472.00, with the last payment received on September 14, 2021. The Trustee shows a total of \$96,754.00 is due. The debtor is delinquent \$14,282.00 in plan payments with a monthly payment of \$6,557.00. Prior to the hearing another payment will be due resulting in the Debtor needing to pay \$20,839.00 to bring this plan current.

DEBTOR’S RESPONSE

Debtor filed a Response on October 27, 2021. Dckt. 75. Debtor states they do not oppose the Trustee’s Motion to Dismiss Case.

DISCUSSION

Delinquent

Debtor is \$14,282.00 delinquent in plan payments, which represents multiple months of the \$6,557.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is Granted, and the case is dismissed.

Final Ruling: No appearance at the November 10, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 13, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion to Dismiss is denied without prejudice.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtors, Dennis Samuel Cobb and Robin Karen Cobb ("Debtors"), are delinquent in plan payments. Debtors have paid a total of \$132,883.71 with the last paid on September 2, 2021. The Trustee shows a total of \$142,634.81 is due. Debtors are delinquent \$9,751.10 in plan payments with a monthly payment of \$4,875.80. Prior to the hearing, another payment will be due bringing the total amount to \$14,626.90 in order to bring the plan current.

DEBTOR'S OPPOSITION

Debtors filed an Opposition on October 27, 2021. Dckt. 101. Debtors states Debtor Dennis Cobb suffered a serious stroke on April 11, 2021. As a result, he was hospitalized for 12 days and unable to return to work. He retired on September 28, 2021. Debtor Dennis Cobb's retirement funds from his employer have been reinvested in an IRA account that the Debtors have accessed sufficient funds from to bring the Plan current. Debtors promise the delinquency will be cured on October 29, 2021.

TRUSTEE'S STATUS REPORT

Trustee provided a status report on November 3, 2021. Dckt. 103. Trustee states Debtor's are current having paid \$14,626.90 by cashier's check posted on November 2, 2021. Trustee recommends the motion to dismiss be denied.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

30. [19-20107-E-13](#) **ANGELITA ADAMS** **MOTION TO DISMISS CASE**
[DPC-2](#) **Gary Fraley** **10-13-21 [73]**

Final Ruling: No appearance at the November 10, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 13, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Dismiss is denied without prejudice.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Angelita Adams (“Debtor”), is delinquent in plan payments. The Debtor has paid a total of \$102,243.46, with the last payment

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

32. [19-26929-E-7](#) **BRIAN FARMER** **MOTION TO DISMISS CASE**
 [DPC-1](#) **Mikalah Liviakis** **10-13-21 [18]**

**CASE CONVERTED TO CHAPTER 7
ON 10/18/2021**

Final Ruling: No appearance at the November 10, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 13, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Dismiss is denied without prejudice, the case having been converted to one under Chapter 7.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks to dismiss Brian Mitchell Farmer’s (“Debtor”) Chapter 13 case. Debtor filed a Notice of Conversion on October 18, 2021, however, converting the case to a proceeding under Chapter 7. Dckt. 22. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor’s case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on October 18, 2021. *McFadden*, 37 B.R. at 521.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice as moot.

33.	<u>20-23834-E-13</u> <u>DPC-2</u>	CHRISTINE BONILLA Peter Macaluso	MOTION TO DISMISS CASE 10-13-21 [52]
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Final Ruling: No appearance at the November 10, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 13, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The hearing on the Motion to Dismiss is denied without prejudice.
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Christine Bonilla (“Debtor”), is delinquent in plan payments. The Debtor has paid a total of \$22,035.00, with the last payment received on September 14, 2021. The Trustee shows a total of \$31,055.00 is due. The debtor is delinquent \$9,020.00 in plan payments with a monthly payment of \$4,325.00. Prior to the hearing, another payment will be due bringing the total amount to \$13,255.00 to bring the plan current.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on October 26, 2021. Dckt. 61. Debtor requests an additional 30 days to file, set, and serve a motion to modify as the determination of the amount of the Class 2 claim will then be resolved.

DISCUSSION

Delinquent

Debtor is \$9,020.00 delinquent in plan payments, which represents multiple months of the \$4,325.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

However, the court notes that the court recently ruled on an objection to claim in favor of Debtor. Dckt. 67. This was necessary for Debtor to propose a modified plan.

In light of the prosecution of this case and the Debtor’s financial ability to prosecute this case, the Debtor has sufficiently addressed the Trustee’s Motion.

The Motion is denied without prejudice, the court **CONFIDENT** that Debtor and Debtor’s counsel **SHALL** diligently prosecute confirmation of a modified plan in this case. The court does not perceive a need to clog a future calendar with a continuance.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

Final Ruling: No appearance at the November 10, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 21, 2021. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

<p>The Motion to Dismiss is denied without prejudice.</p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the Debtor, Rosa E. Martinez (“Debtor”), is delinquent on 2 months of payments, with another payment due by the hearing.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on September 28, 2021. Dckt. 47. Debtor states that she has been in regular contact with the Trustee’s office, and Debtor claims that their communications indicate that she is current on all payments based on those communications. Debtor will review her own records to confirm if she is delinquent, and work with the Trustee’s office to come to a reasonable solution.

DISCUSSION

Delinquent

Debtor is \$6,482.86 delinquent in plan payments, which represents multiple months of the \$3,204.84 plan payment. Before the hearing, another plan payment will be due, putting the total payment required to \$9,685.70 for the plan to be current by the date of hearing. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a claim that she believes she is current is not evidence that resolves the Motion.

The Trustee agreed to a short continuance to allow Debtor and Debtor's counsel to address the confusion as to Debtor's default given the age of this case.

Stipulated *Ex Parte* Motion to Allow Modification of Debtor's Chapter 13 Plan

On October 27, 2021, Debtor, Rosa E. Martinez, and Chapter 13 Trustee, David Cusick, filed a Joint Motion to Modify Chapter 13 Plan, Dckt. 50. The Motion provides the Debtor to pay the ongoing mortgage payments to Rushmore Loan Management Services starting July 2021, rather than the Trustee, because Debtor began making these payments on the date indicated. Additionally, the Debtor has sent a \$2,020.00 payment to the Trustee that is sufficient to finish the Plan if this motion is granted. Lastly, if the motion is granted, the pending Motion to Dismiss set for November 10, 2021 is resolved.

Order Granting Stipulated *Ex Parte* Motion

On November 3, 2021, the court granted a motion modifying the confirmed plan to allow the ongoing mortgage payments on Rushmore Loan Management Services starting in July of 2021 to be paid by the Debtor.

Given the motion was granted, the pending Motion to Dismiss was resolved, as stipulated by the Trustee and Debtor.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss denied without prejudice.

Final Ruling: No appearance at the November 10, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 13, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Jose I Aguilar (“Debtor”), is delinquent in plan payments. The Debtor has paid a total of \$39,426.71, with the last payment received on September 24, 2021. The Trustee shows a total of \$41,339.24 is due. The debtor is delinquent \$1,912.53 in plan payments with a monthly payment of \$860.32. Prior to the hearing, another payment will be due bringing the total amount to \$2,772.85 to bring the plan current

DISCUSSION

Delinquent

Debtor is \$1,912.53 delinquent in plan payments, which represents multiple months of the \$860.32 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

36. [18-23958-E-13](#) **ROBERT/JAYMI ALAS** **MOTION TO DISMISS CASE**
[DPC-2](#) **Mikalah Liviakis** **10-13-21 [29]**

Final Ruling: No appearance at the November 10, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 13, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Robert Alas and Jaymi Taaryn Alas (“Debtors”), are delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$1,990.00 delinquent in plan payments, which represents two months of the \$995.00 plan payment. Trustee states that Debtor has paid \$29,615.00, with the last payment received on June 30, 2021 and shows a total of \$31,605.00 is due. Before the hearing, another plan payment will be due and as a result Debtor will need to pay \$2,985.00 in order to bring the Plan current by the date of the hearing. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Final Ruling: No appearance at the November 10, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 13, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Alexander Garrett Rehe (“Debtor”), delinquent in plan payments

DISCUSSION

Delinquent

Debtor is \$1,400.00 delinquent in plan payments, which represents two months of the \$700.00 plan payment. Trustee states that Debtor has paid \$13,300.00, with the last payment received on July 22, 2021, and shows a total of \$14,700.00 is due. Before the hearing, another plan payment will be due and as a result Debtor will need to pay \$2,100.00 in order to bring the Plan current by the date of the hearing. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

38. [19-27786-E-13](#) **LAURIE YODER** **MOTION TO DISMISS CASE**
 [DPC-1](#) **Mikalah Liviakis** **10-13-21 [30]**

Final Ruling: No appearance at the November 10, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 13, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Laurie Lee Yoder (“Debtor”), is delinquent on plan payments. The Debtor has paid a total of \$81,062.00, with the last payment receive on October 7, 2021. The Trustee shows a total of \$88,344.40 is due. The debtor is delinquent \$7,282.40 in plan payments

with a monthly payment of \$4,218.05. Prior to the hearing, another payment will be due resulting in the Debtor needing to pay \$11,500.45 to bring this plan current.

DISCUSSION

Delinquent

Debtor is \$7,282.40 delinquent in plan payments, which represents multiple months of the \$4,218.05 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Final Ruling: No appearance at the November 10, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 13, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Sarah Wells (“Debtor”), is delinquent on plan payments. The Debtor has paid a total of \$6,675.00, with the last payment received on July 27, 2021. The Trustee shows a total of \$7,360.00 is due. The debtor is delinquent \$685.00 in plan payments with a monthly payment of \$230.00. Prior to the hearing, another payment will be due resulting in the Debtor needing to pay \$915.00 to bring this plan current.

DEBTOR’S RESPONSE

Debtor filed a Response on October 14, 2021. Dckt. 70. Debtor states the delinquency will be cured prior to the hearing date.

TRUSTEE’S SUPPLEMENTAL *EX PARTE* DOCUMENT

Trustee filed a supplemental ex parte document stating Debtor’s payment of \$915.00 has been posted and the plan payments are current through October, 2021. Trustee requests the Motion be dismissed.

The Trustee, having filed an *Ex Parte* Motion to Dismiss the pending Motion on November 3, 2021, Dckt. 73; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil

Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Sarah Wells (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 73, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

Final Ruling: No appearance at the November 10, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 13, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtors, Jaime Galgana Umali and Josephine Dial Umali ("Debtors"), is delinquent on plan payments. The Debtors have paid a total of \$1,700.00. The Trustee shows the debtors are delinquent \$1,684.00 in plan payments with a monthly payment of \$1,692.00.
2. The Trustee's Objection to Confirmation of Chapter 13 Plan was heard and sustained on September 14, 2021, Dckt. 28. To date the Debtors have failed to take further action to confirm a plan in the case.

DISCUSSION

Delinquent

Debtors are \$1,684.00 delinquent in plan payments, which represents a portion of one month of the \$1,692.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Prior Plan Denied, No New Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on September 14, 2021. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Final Ruling: No appearance at the November 10, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 13, 2021. By the court’s calculation, 37 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Elisei Brandusa (“Debtor”), does not have a plan pending.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on October 7, 2021. Dckt. 35. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Amended Plan

Debtor had not filed a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on July 21, 2021, at the time of the filing of the Motion to Dismiss.

On October 8, 2021, Debtor filed a Motion to Confirm Amended Plan. Dckt. 38. However, no Amended Plan has been filed by Debtor.

The Motion further states that Amended Income and Expense Schedule have been filed. However, there was no such filing is on the Docket.

Debtor's counsel explained that a clerical error occurred in his office and the failure to file the documents was inadvertent. The Trustee agreed to a continuance to allow Debtor to prosecute this case.

Trustee's Opposition to Debtor's Motion to Confirm

On November 1, 2021, Chapter 13 Trustee, David Cusick, filed an Opposition to Debtor's Motion to Confirm Chapter 13 Plan, Dckt. 50. The Opposition states the Debtor, Elisei Brandusa has not filed an Amended Plan. The Trustee objected to the previous plan and the Court sustained Trustee's Objection on July 21, 2021, Dckt. 30.

Trustee's Supplemental *Ex Parte* Motion to Dismiss

Trustee filed a supplemental ex parte document stating (1) Debtor has filed a Second Amended Plan, (Dckt. 56), and a Motion to Confirm, (Dckt. 55), set for hearing on December 7, 2021 and (2) Debtor has paid \$389.92 into the Plan and is current on Plan payments to the Trustee under the Second Amended Plan pending. Trustee requests the Motion be dismissed.

The Trustee, having filed an *Ex Parte* Motion to Dismiss the pending Motion on November 3, 2021, Dckt. 61; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Elisei Brandusa ("Debtor"); the *Ex Parte* Motion is granted, the Chapter 13 Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 61, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee's Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

Final Ruling: No appearance at the November 10, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 15, 2021. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required. The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is denied without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Iesha Shaney Nickerson (“Debtor”), has an overextended plan.
2. Is delinquent on plan payments.

DEBTOR’S OPPOSITION

Debtor filed an opposition on October 6, 2021 stating:

1. She will bring the account current.
2. She needs much more time to modify the plan, she does not want it to go to 57 months.
3. She is looking for more disposable income.

In Debtor's Declaration, filed October 7, 2021, Debtor states she has been experiencing health problems. Debtor requests the court to allow her until the end of the year to modify the Plan.

DISCUSSION

Material Default for Breaching a Plan Term

Debtor is in material default under the Plan because the Trustee calculates the plan will take 57 months to complete versus 36 proposed. Section 5.03 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

Delinquent

Debtor is \$200.00 delinquent in plan payments, which represents multiple months of the \$100.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the hearing, the Trustee reported that the Debtor was still delinquent.

Debtor's counsel addressed amendments to be filed to correct the term of the Plan and reset Debtor's payments. The Trustee concurred with a continuance.

Debtor's Supplemental Schedules

On October 27, 2021, the Debtor, Iesha Shaney Nickerson, filed Amended Schedules I & J, Dckt. 84. The Debtor's Supplemental Schedule I reflects a Monthly Gross Income of \$4,354.35 and a Monthly Take-Home Income of \$2,962.98. Additionally, the Debtor's Supplemental Schedule J reflects her monthly expenses being in the amount of (\$2,762.98) and a Net Monthly Income of \$200.00. The Amended Schedules I & J provided by the Debtor give the Debtor the ability to cure the \$200.00 delinquency and make future plan payments of \$100.00 a month.

Ex Parte Motion and Order Modifying Plan

On November 5, 2021, Debtor and Chapter 13 Trustee filed an Ex Parte Motion and Order Modifying Plan to Conform to Claims Filed. Dckt. 88. Debtor and Trustee jointly move to modify the Plan confirmed December 18, 2019, pursuant to Local Bankruptcy Rules § 3015-1(d)(3). Parties propose to modify the Plan by increasing payments to \$200.00 monthly commencing on December 25, 2021, month twenty-eight (28) of the plan. Additionally, the Plan shall provide in Class 5 for the priority IRS claim of \$4,076.90.

Debtor having addressed the financial issues and working to prosecute a Modified Plan, the Motion is denied without prejudice.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice, and the bankruptcy case shall proceed in this court.